



Oregon

John A. Kitzhaber, MD, Governor

Board of Massage Therapists

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BOARD MEETING MINUTES

May 14, 2012

Attendance

Board Members:

David Fredrickson, LMT, Chair
Heather Bennouri, LMT Vice Chair
Crystal Collier, LMT
Melanie Morin, LMT
Kathy Calise, Public Member
Craig McMillin, Public Member
Dr. Carrolle Chapman, ND, Public Health Member

Staff:

Kate Coffey, Executive Director
Diana Nott, Compliance Coordinator
Lori Lindley, Assistant Attorney General

Public: Lisa Barck Garofalo Patrick Riggs Kamisha

Call to Order

Fredrickson called the meeting to order at 9:08 am. Role call was performed. **Bennouri, Calise, Collier, McMillin and Fredrickson** were present, as well as Kate **Coffey**, Executive Director and Lori **Lindley**, Assistant Attorney General. **Morin** and **Chapman** arrived later in the meeting.

Fredrickson asked each member of the public to introduce themselves. Present at this time were Lisa Barck Garofalo, Patrick Riggs and Riggs' companion Kamisha.

1) **Approve Agenda** – **Bennouri** moved to approve the agenda as presented. **Second the Motion: Calise** **In favor: Bennouri, Calise, Collier, McMillin and Fredrickson** **Opposed: None.** **Motion carries.**

2) **Approve Minutes of March 30-31, 2012** – **Bennouri** moved to approve the minutes of March 30-31, 2012 as presented. **Second the Motion: Calise** **In favor: Bennouri, Calise, Collier, McMillin and Fredrickson** **Opposed: None.** **Motion carries.**

3) **Director's Report** – During this time, **Fredrickson** reported that this would be **Collier's** last meeting as a Board member. She has served a full term with the OBMT and the Board thanked her for all of her hard work and dedication. She was presented with a plaque to commemorate her time with the Board.

Morin arrived at 9:11 am.

a) **Finances** – **Coffey** reported on the status of the Board budget. The budget status report reflects actual revenues and expenditures through April 2012. The Board experiences a \$2,167 positive net income for the month of April 2012. The board realized a \$10,000 more revenue than was budgeted and spent \$3,000 more than was budgeted. The unbudgeted revenue was in the categories of licensure fees and fingerprint fees. The extra expenditure was in the area of payroll, as there was an unbudgeted unemployment bill that was paid in the month of April. There may be one additional quarter of unemployment as the extensions for unemployment were discontinued. **Bennouri** noted that three individuals had chosen to access the credential review option. She inquired if any of those individuals have been granted a license at this time. **Coffey** indicated that even though they have accessed the application process, she is unsure if they have yet

taken their examination. **Bennouri** asked if the fee is appropriate for the additional time taken for the review. **Coffey** believes that the fee is appropriate, as it can be quite difficult and time consuming for staff to review all of the provided information to determine if an applicant will qualify. **Coffey** indicated that the office did refund one fee, as it was discovered that one applicant who had applied through the credentialing review process would actually qualify through the traditional application process. The applicant was notified of this fact and the additional \$250 was refunded to them.

b) Board Action Log – The Board action log was updated to reflect any outstanding items. **Coffey** reported to the Board that the state web sites are migrating to a new vendor. This should be completed in the near future. Once the Model Curriculum is adopted, the Oregon schools will complete a review and recertification process. The bylaws have been adopted. **Coffey** will be meeting with the other SIBA agency heads to discuss database issues and determine if consolidation of costs is an option. She is working on a welcome letter for new applicants.

When HB 2381 passed, the intent was to have all Board personnel policies fall under DAS HR policy. However, this still requires Board approval. **Calise moved** to adopt the HR policies presented to the Board. **Second the Motion: Collier**
In favor: Bennouri, Calise, Collier, McMillin, Morin and Fredrickson **Opposed: None.** **Motion carries.**

c) Compliance Update – **Nott** provided the Board with a Compliance Report from March 1, 2012 to March 31, 2012. The report includes information such as: complaints open at start date (51); active cases at start date (30), number of new complaints received (31); number of cases opened (12); number of complaints closed (26); number of cases closed (5); and number of cases closed with disciplinary action (1).

d) Misc. – **Coffey** reported that Oregon Chief Operating Officer Michael Jordan sent out an email with the compensation plan for Executive Directors, Management Services and Unrepresented Employees for the 2011-2013 Biennium. It details the furlough expectations, health care and benefits package, COLAs to be made, salary increases and PERS pickups. **Calise moved** to adopt the Management Package as presented to the Board, effective December 31, 2011.
Second the Motion: Morin **In favor: Bennouri, Calise, Collier, McMillin, Morin and Fredrickson** **Opposed: None.** **Motion carries**

4) Committee Updates

a) Education Committee – Lisa Barck **Garofalo** reported to the Board that the Model Curriculum is in process. The Board was provided with a list of muscles that the committee believes should be taught in school as core curriculum requirement. One muscle was removed from the prior list, and five additional muscles were added. In addition, the committee provided the Board with a pathology list which included eighty-eight different pathologies which the committee thought should be taught in core curriculum programs. She has received information from the Department of Education that the deadline for curriculum changes is July 2013, with a six month grace period. She would like to propose that when the committee comes up with a good draft, she and a Board representative meet with the Department of Education to review the work to be certain that everything is developing as expected. **Calise** will attend that meeting on behalf of the Board.

b) Scope of Practice Committee – **Coffey** reported that the committee met April 13, 2012. She and **Fredrickson** have a meeting with the Governor's office to review the proposed legislative concepts discussed at the March 2012 Board meeting. **Morin** will no longer be able to serve as the Board liaison due to scheduling conflicts. **Bennouri moved** to appoint **Calise** as the interim committee liaison for the Scope of Practice Committee. **Second the Motion: Collier** **In favor: Bennouri, Calise, Collier, McMillin, Morin and Fredrickson** **Opposed: None.** **Motion carries.**

Chapman arrived at 9:29 am.

c) Rules Committee – **Bennouri** reported that this committee has not met since the last Board meeting. However, there is a Rules Hearing scheduled for June 11, 2012 at 9:00 am, prior to the Board meeting.

d) Committee Interest – **Therese Bauer** – The Board reviewed the committee interest form. There was discussion on the need for additional committee members at this time, and including members in the middle of a task, such as the Model Curriculum. **McMillin moved** to make no more appointment to the Education Committee until its current work is completed or it has a need for new members. **Second the Motion: Morin** **In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson** **Opposed: None.** **Motion carries.**

Coffey will prepare a letter. The application will be kept on file for future reference.

5) Board Business

- a) **Demographics Report** – The Board received a quarterly demographics report of licensees. This includes information on gender, age, ethnicity, years in practice and modalities practiced.
- b) **Exam Statistics** – The Board reviewed the statistical information for the Oregon Practical Exam. There was discussion on the out-of-state failure rate.
- c) **Pregnancy Massage** – The Board received a letter about pregnancy massage. A LMT indicated that they were being forced to provide an 80-minute deep tissue massage on a client who was 12 weeks into her pregnancy. The LMT indicated that they were certified in prenatal massage and that there were risks with performing such a massage for more than 50 minutes. The LMT feels that the spa is placing clients at risk, over the experience and expertise of the LMT and requests assistance from the Board. **Collier** stated that a company should not be dictating what a practitioner should and shouldn't be doing. **Bennouri** stated that corporate medicine isn't appropriate and there are bigger issues at stake; a corporation should not be making medical decisions, policies or choices that are the responsibility of the practitioner to do no harm. Ultimately, the Board has no jurisdiction over the facility. A letter will be sent to the practitioner.
- d) **Medical Marijuana Inquiry** – The Board office has received several telephone calls inquiring about the ability of massage therapists to work in medical marijuana clinics. These inquiries have had multiple components to them: Will a LMT lose their license if they provide services in a medical marijuana clinic? Will a LMT lose their license if they are a medical marijuana card holder? Is it acceptable and legal for a Licensed Massage Therapist, who is also a medical marijuana card holder, to provide massage services to a medical marijuana patient using a massage lotion that contains cannabis?

Because there are conflicting federal and state laws, the Board is concerned about providing information to licensees that may be inappropriate or incorrect according to one entity or another.

After a great deal of discussion, it was determined that a massage therapist will not lose their license simply for having a medical marijuana card. However, there **could** be issues if the practitioner were found to be practicing under the influence of a controlled substance. This would be the same as any other prescription, over the counter medication or alcohol. If the practitioner uses any mind-altering substance and then engages in the practice of massage, this is a public safety issue and the practitioner may be subject to disciplinary action by the Board.

Additionally, a LMT is not allowed to administer a controlled substance or medication and as such they would not be allowed to administer a lotion containing any controlled substance.

Ultimately, because there are conflicting federal and state laws, the Board will follow the laws to the best of their ability.

- e) **Perception Matters** – **McMillin** indicated that as long as the Board is a rulemaking authority, there will be feelings of alienation. However, he would like to promote the idea of the Board working in partnership with the profession. He would like Board staff to contact the schools and try to have a Board presentation as part of one of the required classes. This can help explain what the Board does, what staff does, what can be expected with the examination and promote the idea that this is "our" profession. He would also like to see more information provided to attendees at the Board meeting. If there are handouts at a meeting, he feels that the public should have them as well. The Board should be more communicative. They should be more open and available so that others may see what it is that the Board does. **Calise** indicated that some individuals are displeased with the newsletter being available in electronic format. **Coffey** will try to determine how many individuals would like to receive physical mailings rather than electronic mailings. Staff will then conduct a cost analysis and report on the outcome.

Calise moved to take a break at 10:10 am. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

The Board returned from break at 10:15

f) Request for Exemption – Zen Shiatsu – Collier moved to place this item in executive session, as it involves a former LMT and may involve potential discipline. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

6) BOARDerline – The Boarderline is awaiting the review of the Board Chair. **Fredrickson** indicated that he had no changes to the articles. The Board discussed articles for the next publication date. **Bennouri** will write articles on license numbers in advertising and providing supplements. **Collier** will write an outgoing Board member article. **Morin** will provide an article on an as yet undetermined topic, as the office gets positive feedback on her articles.

7) Public Comments – Opportunity for the public to address the Board.

Lisa Barck **Garofalo** stated that from her perspective, the examination statistics indicate exam is doing its job in keeping the public safe. She suggested articles on regional liaisons and new Board members. She thanks the Board for their work. **Chapman** will write an introduction of herself. **Coffey** will write an article on regional liaisons.

The Board entered Executive Session at 10:25 am and returned to Public Session at 2:00 pm.

8) Executive Session

- a) Practical Exam (192.501(4))**
- b) Compliance (192.660(2)(k))**

The Board will now meet in Executive Session to discuss certain matters on the agenda pursuant to ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection, ORS 192.660(2)(h) consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed, ORS 192.660(2)(k) to consider information obtained as part of an investigation of a licensee, applicant, or other persons alleged to be practicing in violation of law pursuant to ORS 676.175 and ORS 192.660(2)(i) To review and evaluate the job performance of the Executive Director or staff. Prior to entering into Executive Session, the nature of and authority for holding the Executive Session will be announced.

Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of executive session, the Board will return to open session and welcome the audience back into the room.

9) Action on Executive Session Items

- a) Case 1265 – Calise moved** to propose to the licensee that he stipulate to the revised stipulated agreement, which extends his probation to 2015; requires continuing education on ethics, communication, draping and boundaries; places licensee on current contracted peer supervision program, and requires licensee to disclose his status anytime he engages in the practice of massage. **Second the Motion: Bennouri In favor: Bennouri, Calise, Chapman, McMillin, Morin and Fredrickson Opposed: Collier. Motion carries.**
- b) Case 1292 – McMillin moved** to set this matter for hearing. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**
- c) Case 927 – McMillin moved** to request the Assistant Attorney General to advise the licensee that the Board is of the opinion that there is no apparent authority to remove a matter of public record. **Second the Motion: Bennouri In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

d) Case 1273 – Collier moved to revoke licensee’s massage license for violations of OAR 334-010-0025(3)(a)(A)(B)(C)(D), a massage therapist shall use safe and functional coverage/draping practices during the practice of massage when the client is disrobed. Safe and functional coverage/draping means: LMT explains, maintains and respects coverage/draping boundaries, client gives informed consent, genitals and gluteal cleft of male and female clients and the breast area of female clients are not exposed and massage or movement of the body does not expose genitals, gluteal cleft or breast area; OAR 334-030-0005(2)(a), the LMT shall be accountable to his or her clients for the quality and effectiveness of care and services and for creating the basic conditions and boundaries necessary to foster safety and trust in the client professional relationship; OAR 334-030-0005(2)(c), the LMT shall ensure that their actions with a client are based on understanding and implementing the core values of caring, respect, compassion, appropriate boundaries and appropriate use of personal power; OAR 334-030-0005(2)(h), the LMT shall base decisions and actions on behalf of a client on sound ethical reasoning and current principles of practice; OAR 334-040-0010(19)(a)(B)(iv), sexual misconduct which includes a sexual violation...touching of breasts or genitals; OAR 334-040-0010(19)(a)(C)(iii), sexual impropriety which is any behavior, gestures or expressions... an examination or touching of genitals. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

e) Case 1274 – Bennouri moved to issue a Notice of Proposed Action for one violation of OAR 334-010-0025(8), active licensed massage therapists must display their license in a location clearly visible to their clients; one violation of OAR 334-010-0010(19)(a)(C)(i), disrobing or draping practices that reflect a lack of respect for the client’s privacy; 334-040-0040(19)(a)(C)(iii)sexual impropriety which is any behavior, gestures or expressions... an examination or touching of genitals; for a total civil penalty of \$1,500 and require LMT to complete a minimum of 12 hours of continuing education in ethics and communication. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

f) Case 1290 – McMillin moved to issue a letter of concern regarding communication. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

g) Case 1316 – McMillin moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in the practice of massage without a license, for a total civil penalty of \$500, and refer to the Lane County District Attorney for consideration of criminal prosecution. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

h) Case 1318 – Collier moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in the practice of massage without a license; and four violations of ORS 687.021(2)(a); for a total civil penalty of \$4,500; and refer to the Washington Board of Massage. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

i) Case 1320 – Bennouri moved to issue a letter of concern, to include a reference to insurance law and explanation of potential consequences of restrictions or revocation of licensure for insurance fraud. Recommend clearly written billing rates and policies with signature of understanding from clients. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

j) Case 1367 – Morin moved to issue a Notice of Proposed Action for twelve violations of ORS 687.021(2)(a), advertising for massage without a license; for a total civil penalty for \$12,000; and refer to the District Attorney for consideration of prosecution. **Second the Motion: Collier In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

k) Case 1389 – McMillin moved to issue a Notice of Proposed Action for one violation of ORS 687.021(1), engaging in or purporting to be in the practice of massage without a license; and two violations of ORS 687.021(2)(a), advertising for massage without a license; for a total civil penalty of \$2,500. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

l) Case 1395 – McMillin moved to defer this case to August 2012. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

m) Case 1397 – Morin moved to issue a Notice of Proposed Action for thirteen violations of ORS 687.021(2)(a), advertising for massage without a license; for a total civil penalty of \$13,000 and refer to the Lane County District Attorney for consideration of criminal prosecution. **Second the Motion: Collier In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

n) **Case 1403 – Morin moved** to issue a letter of concern regarding the scope of practice for reflexology. **Second the Motion: Collier In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

o) **Practical Exam – Collier moved** to keep the Oregon Practical Exam and to form a new Practical Exam Committee to review the exam with an emphasis on out of state passage rates, English as a second language and clarification of content and structure. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

Calise moved to appoint **Bennouri** as the Board liaison to this new committee and **Collier** as the committee chair. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

p) **Zen Shiatsu – Calise moved** to deny the request for exemption. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

q) **Executive Session Closed Case Report – Collier moved** to accept the Executive Session closed case report as submitted in exhibits 1-9. **Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

Case No. 1300

Allegation: No license number in ad **Closed:** Compliance met

Case No. 1301

Allegation: No license number in ad **Closed:** Compliance met

Case No. 1315

Allegation: Unlicensed practice **Closed:** Unable to substantiate

Case No. 1317

Allegation: Unlicensed practice **Closed:** Unable to substantiate

Case No. 1319

Allegation: Unlicensed practice **Closed:** Respondent unreachable

Case No. 1322

Allegation: No license number in ad **Closed:** Compliance met

Case No. 1324

Allegation: No license number in ad **Closed:** Allegations withdrawn

Case No. 1356

Allegation: No license number in ad **Closed:** Compliance met

Case No. 1358

Allegation: No license number in ad **Closed:** Compliance met

Case No. 1360

Allegation: No license number in ad **Closed:** Compliance met

Case No. 1361

Allegation: No license number in ad **Closed:** Compliance met

Case No. 1362**Allegation:** Other**Closed:** Based on further review**Case No. 1363****Allegation:** Other**Closed:** Based on further review**Case No. 1364****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1365****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1366****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1373****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1374****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1375****Allegation:** Failure to provide documents**Closed:** Compliance met**Case No. 1376****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1377****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1378****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1379****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1380****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1381****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1382****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1383****Allegation:** No license number in ad**Closed:** Compliance met**Case No. 1384****Allegation:** No license number in ad**Closed:** Compliance met

Case No. 1385**Allegation:** No license number in ad **Closed:** Compliance met**Case No. 1386****Allegation:** No license number in ad **Closed:** Compliance met**Case No. 1387****Allegation:** No license number in ad **Closed:** Compliance met**Case No. 1388****Allegation:** No license number in ad **Closed:** Compliance met**Case No. 1398****Allegation:** No license number in ad **Closed:** Compliance met**Case No. 1399****Allegation:** No license number in ad **Closed:** Compliance met**Case No. 1402****Allegation:** No license number in ad **Closed:** Compliance met**10) Public Session Compliance Action –**

a) **Public Session Closed Case Report – Collier moved** to accept the Public Session closed case report as submitted in exhibits 1-3. **Second the Motion: Calise In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries.**

Case No. 1138**Allegation:** Sexual Impropriety **Ray Drlik**
Closed: Stipulated agreement issued**Case No. 1246****Allegation:** Unprofessional conduct **Eleonore Witterland**
Closed: Stipulated agreement issued**Case No. 1255****Allegation:** Unlicensed practice **Cheryl Cassidy**
Closed: Stipulated agreement issued**Case No. 1266****Allegation:** Sexual abuse of a client **Charles Lang**
Closed: Revoked – Final Default Order**Case No. 1275****Allegation:** Unprofessional conduct **Michael Wade**
Closed: Surrendered

11) Public Forum – Opportunity to share thoughts that pertain to agenda items – There was no public in attendance at this time.

12) Announcements – The June 11, 2012 meeting will begin with a rules hearing at 9:00 am. The Board meeting will begin at 10:00 am. **Bennouri** requested that the electronic Board member contact list be updated. In June, the Board will have further Practical Exam Committee discussion and contact **Collier** about scheduling meetings and obtaining members. **Chapman** shared that there is a health and wellness program on Portland community television every month, which she hosts. It is also available on YouTube. It gives the public an opportunity to understand the role they play in their own

healthcare and the many ways and alternatives in which they can care for themselves. It airs on channel 11 the last Wednesday of each month. The Board indicated that this was information that could be placed in the newsletter, as well.

13) Adjourn Meeting – Bennouri moved to adjourn the meeting. Second the Motion: Morin In favor: Bennouri, Calise, Chapman, Collier, McMillin, Morin and Fredrickson Opposed: None. Motion carries. The meeting was adjourned at 2:21 pm.